

U of T Faculty of Law



CANADIAN IMMIGRATION & REFUGEE LAW

Fall 2003

VOLUME II
(Weeks 8-12)

Prof. Audrey Macklin

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outcomes over another.

But the unsavory features of the new humanitarianism go beyond these observations to include a consideration of the various roles played by these organizations in global politics, how they are containers of centralized power and authority, and whose "pragmatism" can be disturbingly disconnected from those in whose name it acts. Whereas once we likened humanitarian agencies to white knights on muscled steeds charging to rescue the powerless and weak, we are more aware that these knights also are interested in mundane activities such as career advancement, protecting the agency's reputation and cultivating the largess of patrons, and are likely to use political and pragmatic considerations to navigate the moral dilemmas that populate complex emergencies. We are less willing to take the rhetoric of and presentation of self by humanitarian international organizations at face value and more likely to wonder whose interests are being served by any set of policies. We now recognize that states can be humanitarians and that humanitarians can be cunning politicians. None of this means that we need to be saved from our saviors. But it does suggest that asking more about the activities of those who are expected to carry out our principles is not only good politics, it also is sound humanitarianism.

Globe & Mail

Saturday, March 2, 2002

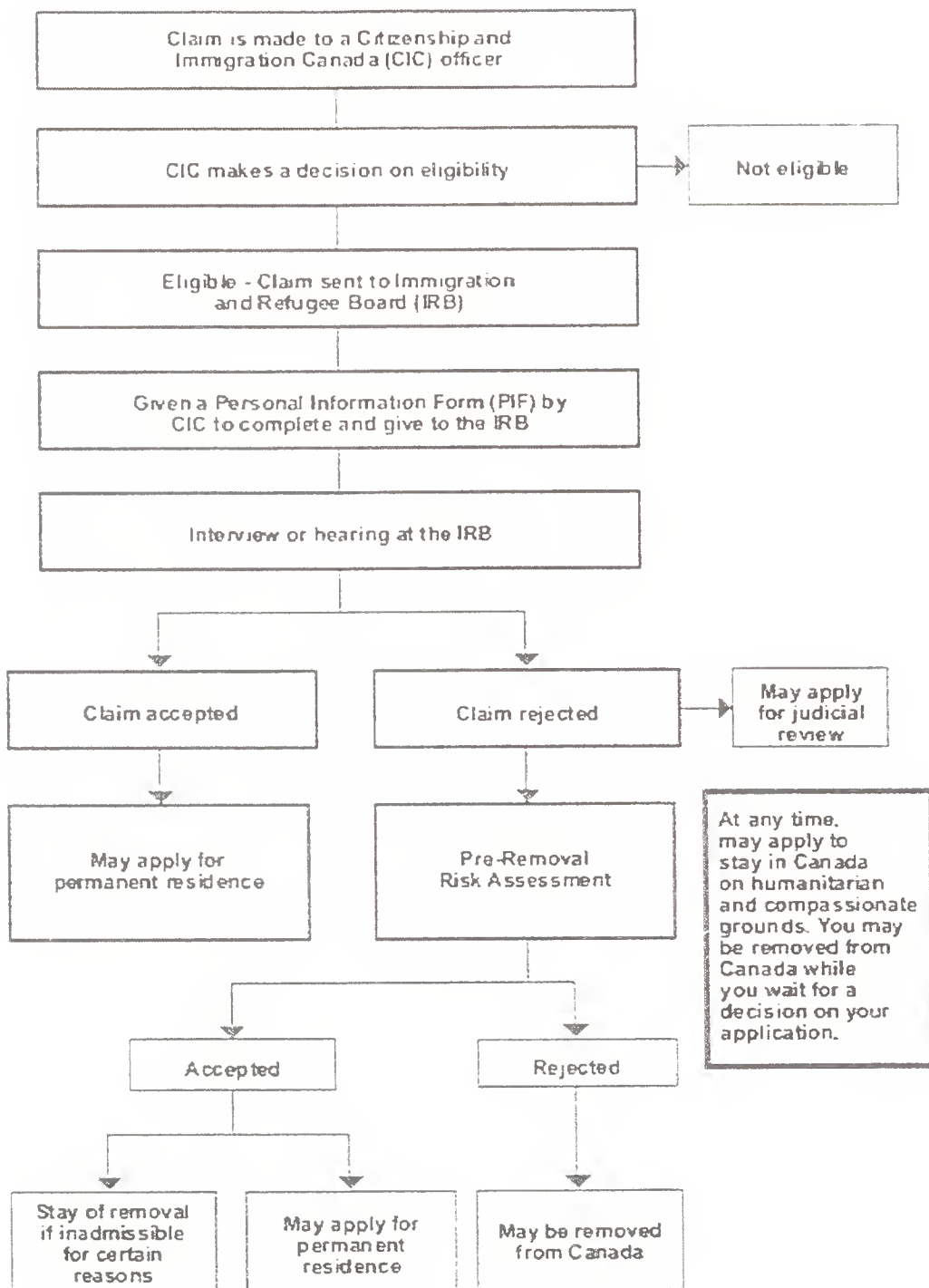
"Man slain after Canadian rejection, paper says"

A man in **Guatemala** was shot dead just days after being denied asylum at the Canadian embassy in the country, the Spanish-language newspaper Correo Canadiense reported yesterday.

The Toronto-based newspaper said Cesar Augusto Rodas was shot to death Feb. 15, shortly after being turned away from the embassy where he had asked for protection because of death threats.

The newspaper said Mr. Rodas was involved in a controversy involving the country's Vice-President, Juan Francisco Reyes Lopes, and a prominent Guatemalan businessman.

OVERVIEW OF CANADA'S INLAND REFUGEE DETERMINATION PROCESS



In *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177, Wilson J. (speaking for 3/6 judges) ruled that the term “everyone” in s. 7 of the *Charter* “includes every human being who is physically present in Canada and by virtue of such presence amenable to Canadian law.” *Refoulement* would constitute a violation of security of the person, by exposing a person to the risk of persecution at the hands of another. The refugee determination scheme in place at the time violated the principles of fundamental justice by depriving most refugee claimants of the ability to know and respond to the Minister’s case against them. In circumstances where “a serious issue of credibility is involved”, fundamental justice requires an oral hearing before the decision-maker. The effect of *Singh* was to require an oral hearing in all cases leading to refusal of a refugee claim, has been a feature of Canada’s refugee determination system since 1989.

DEPORTATION OF PERMANENT RESIDENTS ON GROUNDS OF CRIMINALITY (Note by Prof. Macklin)

Immigration Act Pre-1994

A permanent resident could lose permanent status and be removed from Canada if convicted inside or outside Canada of various criminal offences (ranging from moderate to severe as measured by maximum possible sentence), or if the immigration officer believed on a balance of probabilities that such an offence had been committed outside Canada.

If a removal order was made, the permanent resident could appeal to the Immigration Appeal Division, which had jurisdiction to quash or stay the removal order (subject to whatever terms and conditions the IAD imposed) on the grounds of

- Error of law or fact, or mixed law and fact
- Humanitarian and compassionate (H&C) considerations militating against removal of the permanent resident from Canada

Immigration Act post-1994 (Bill C-44 aka "Just Desserts Bill")

Immigration Appeal Division loses H&C jurisdiction if the permanent resident falls within one of the proscribed categories of criminality AND the Minister of Citizenship and Immigration forms the opinion that the person "constitutes a danger to the public in Canada".

Immigration and Refugee Protection Act

Loss of permanent resident status followed by removal if person falls within one of the proscribed categories of criminality. No appeal to the IAD if the permanent resident has been convicted of a crime that was punished in Canada by a term of imprisonment of at least 2 years.

